

FRANKFURT KURNIT KLEIN & SELZ PC

488 Madison Avenue  
New York, New York 10022  
Telephone: (212) 980-0120  
Facsimile: (212) 593-9175

February 17, 2010

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y

Amelia K. Seewann  
Direct dial: (212) 826-5574  
e-mail: aseewann@fkks.com

BY ECF AND FIRST-CLASS MAIL

★ FEB 19 2010 ★

LONG ISLAND OFFICE

Honorable Arthur D. Spatt  
United States District Judge  
Eastern District of New York  
100 Federal Plaza  
P.O. Box 9014  
Central Islip, New York 11722

Re: *Suffolk Federal Credit Union v. Cumis Insurance Society, Inc.*,  
Case No. 10-CV-0001

Dear Judge Spatt:

We represent plaintiff Suffolk Federal Credit Union (“Suffolk”) in the above-referenced action. We write, with the consent of defendant CUMIS Insurance Society, Inc. (“CUMIS”), to request that Your Honor endorse February 25, 2010 as the last day for Suffolk to oppose CUMIS’s Motion to Dismiss or Stay on Abstention Grounds Based Upon the “First-to-File” Rule (the “Motion”), which was filed with the Court via Electronic Case Filing (“ECF”) and served upon Suffolk by ECF and electronic mail on February 8, 2010. See Docket No. 8.

Under the Local Civil Rules of the United States District Court for the Eastern District of New York (the “Local Civil Rules”), oppositions to motions to dismiss made in civil actions shall be served within fourteen days after service of the motion papers. Local Civ. R. 6.1(b). Pursuant to Local Civil Rule 6.4, in computing any period of time prescribed by the Local Civil Rules, Rule 6 of the Federal Rules of Civil Procedure (“FRCP”) shall apply. Local Civ. R. 6.4. FRCP Rule 6(d) provides that, when a party must act within a specified time after service and service is made by electronic means pursuant to FRCP 5(b)(2)(E), the party’s response time is extended by three days. FRCP 6(d). Pursuant to FRCP 5(b)(3) and Local Civil Rule 5.2, service by ECF in this Court is deemed to be service under FRCP 5(b)(2)(E). Because CUMIS served Suffolk with the Motion by ECF and electronic mail, an additional three days should be added to Suffolk’s response time to the Motion.

Thus, Suffolk should have seventeen days to respond to the Motion. As the Motion was served on February 8, 2010, Suffolk’s last day to respond to the Motion should be February 25, 2010.

FRANKFURT KURNIT KLEIN & SELZ PC

Honorable Arthur D. Spatt  
February 17, 2010  
Page -2-

As the Court may know, the Court's ECF system has February 22, 2010, not February 25, 2010, docketed as Suffolk's last day to respond to the Motion. See Docket No. 8. In order to clarify Suffolk's response time, we respectfully request that the Court endorse February 25, 2010 as the last day for Suffolk to oppose the Motion. CUMIS does not oppose this request and has consented to Suffolk's service of its response to the Motion on February 25, 2010 without regard to Suffolk's calculation of the response date under the FRCP or the Local Civil Rules.

Respectfully submitted,

*Amelia Seewann*

Amelia K. Seewann

cc: Arthur Aizley, Esq., Counsel for Defendant (by electronic mail)  
Brian M. Oubre, Esq., Counsel for Defendant (by electronic mail and ECF)

APPLICATION GRANTED  
SO ORDERED:

Hon. Arthur D. Spatt  
U.S. District Judge

The Plaintiff shall file opposition papers on or before  
2/25/10. So Ordered.

Arthur D. Spatt, U.S.D.J.

*2/19/10*